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TRADESHIFT, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

TRADESHIFT, INC., a Delaware corporation, Plaintiff, v. BUYERQUEST, INC., an Ohio corporation, Defendant.	Case No. 3:20-cv-1294 **COMPLAINT FOR** **1. BREACH OF CONTRACT;** **2. TORTIOUS INTERFERENCE WITH CONTRACT;** **3. BREACH OF THE IMPLIED COVENENT OF GOOD FAITH AND FAIR DEALING.** **DEMAND FOR JURY TRIAL**

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COMPLAINT
CASE NO. 3:20-cv-1294

Plaintiff Tradeshift, Inc. ("Tradeshift") hereby complains and alleges against Defendant BuyerQuest, Inc. ("BuyerQuest") as follows:

THE PARTIES

1.   At all relevant times, Tradeshift was, and is, a Delaware corporation and is authorized to conduct business in California. Tradeshift is headquartered in San Francisco, California.

2.   Defendant BuyerQuest is an Ohio domestic corporation and on information and belief is headquartered in Berea, Ohio.

JURISDICTION AND VENUE

3.   The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship among the parties and the amount in controversy exceeds $75,000.

4.   The Court has personal jurisdiction over Tradeshift and BuyerQuest because Tradeshift is headquartered in San Francisco, California and also through BuyerQuest's consent. As further alleged below, Tradeshift and BuyerQuest entered into a contract (the "Master Agreement for the Tradeshift Partner Program"), in which they agreed that "[a]ny legal action or proceeding relating to this Agreement shall be instituted in a state or federal court in San Francisco, California" and "consent[ed] to personal jurisdiction in such counties." In that same contract, BuyerQuest and Tradeshift agreed that each of them would "unconditionally undertake[] to take any and all steps which may be necessary in order to: (i) confer jurisdiction on the Selected Venue . . .," wherein the Selected Venue is defined as state or federal court in San Francisco, California.

5.   Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c). Tradeshift is headquartered and maintains its principal place of business in San Francisco, California and BuyerQuest, having consented to personal jurisdiction in San Francisco, California, is likewise considered a resident of this District under 28 U.S.C. 1391(c)(2).

GENERAL ALLEGATIONS

6.   Founded in 2010, Tradeshift is a software company comprised of some 900

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1 employees that provides a cloud-based business-to-business network and platform that transforms

2 the way companies buy, pay, and work with suppliers. Tradeshift Software as a Service ("SaaS")

3 products help business customers connect with all their suppliers digitally; remove paper and

4 manual processes across procure-to-pay; seize early payment discounts to save money; buy what

5 they need faster; and manage supplier risk.

6   7.   On information and belief, founded in 2012, BuyerQuest is a privately-held

7 company with approximately 55 employees offering cloud-based enterprise procurement software

8 solutions.

9   The J.M. Smucker Project

10   8.   In early 2019, J.M. Smucker, Inc. ("Smucker") was looking for a new provider to

11 replace its existing spend management and e-procurement software provider, whose contract term

12 was coming to an end. Smucker solicited information from various potential SaaS spend

13 management and e-procurement software providers, including from Tradeshift, to determine

14 which company could best meet its requirements. Tradeshift coordinated with another software

15 company, BuyerQuest, in jointly responding to the Smucker vendor search. Ultimately, Smucker

16 selected the Tradeshift/BuyerQuest solution with Tradeshift serving as its new vendor and

17 BuyerQuest acting as a subcontractor to Tradeshift.

18   9.   On June 28, 2019, Tradeshift entered into an agreement (the "Smucker Services

19 Agreement") with Smucker pursuant to which Tradeshift and would provide Smucker with

20 certain software on an annual subscription basis and certain services related to implementing and

21 managing that software. As part of the Smucker Services Agreement, Tradeshift agreed to,

22 among other things, implement a procurement solution for Smucker using the Tradeshift Platform

23 Business Edition solution and the Tradeshift Pay Business Edition solution. BuyerQuest was

24 identified as a "key subcontractor" to Tradeshift in the Smucker Services Agreement and its

25 BuyerQuest Procurement Application was also part of the SaaS subscription services that

26 Smucker contracted for with Tradeshift.

27   10.   Under the Smucker Services Agreement, Smucker was responsible for paying

28 Tradeshift and had no direct payment obligations to BuyerQuest. Instead, Tradeshift and

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1 BuyerQuest entered into separate agreements pursuant to which Tradeshift agreed to pay

2 BuyerQuest a portion of the fees that Tradeshift received from Smucker.

3   11.   Under the Smucker Services Agreement, Smucker contracted to pay certain SaaS

4 software subscription fees to Tradeshift for a period of five years. Smucker also agreed to pay

5 Tradeshift certain service fees for implementing the SaaS software and for managing the software

6 thereafter.

7   The Tradeshift/BuyerQuest Agreements

8   12.   Tradeshift and BuyerQuest entered into several agreements in connection with the

9 Smucker project. This included a written contract entitled "Master Agreement for the Tradeshift

10 Partner Program" (the "Tradeshift Partner Program Agreement"), which was executed on June 7,

11 2019, several weeks before Smucker and Tradeshift signed the Smucker Services Agreement.

12 The Tradeshift Partner Program Agreement sets forth terms and conditions under which

13 BuyerQuest can participate in Tradeshift's Partner Program. The Tradeshift Partner Program

14 Agreement "envisions the creation of one or more Attachments by which the Parties may

15 mutually agree to engage in other alliance business practices, such as reselling, joint marketing,

16 integration development, sub-contracting, the participation of Partner in Tradeshift's Global

17 Partner Program and other potential arrangements."

18   13.   In connection with the Tradeshift Partner Program Agreement, Tradeshift and

19 BuyerQuest entered into the "Cross Selling Attachment," which was also executed on June 7,

20 2019. The Cross Selling Attachment incorporates the terms and conditions of the Tradeshift

21 Partner Program Agreement and sets forth the terms and conditions under which Tradeshift may,

22 acting as an authorized distributor for BuyerQuest, resell certain BuyerQuest products and offer

23 those products to third party clients. The Cross Selling Attachment states that the terms of any

24 particular third party client engagement will be set forth in a separate "Reseller Order Form."

25 Neither the Tradeshift Partner Program nor the Cross Selling Attachment reference the Smucker

26 Agreement or the Smucker project.

27   14.   Tradeshift and BuyerQuest executed a document entitled "Reseller Order Form"

28 on June 28, 2019. Unlike the Tradeshift Partner Program and Cross Selling Attachment, the

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1 Reseller Order Form specifically identifies Smucker as the "Client," Tradeshift as the "Reseller,"

2 and BuyerQuest as the "Provider." The Reseller Order Form specifies that BuyerQuest, as the

3 Provider, agrees to provide certain BuyerQuest SaaS subscriptions and consulting services to

4 Tradeshift, as Reseller, for use in the Smucker project, while Tradeshift, in turn, agrees to pay

5 BuyerQuest a portion of the service and subscription fees it collected from Smucker, the Client.

6   15.   BuyerQuest, was contractually obligated under the Reseller Order Form and

7 related attachments to include Tradeshift in communications with Smucker on the implementation

8 of the Smucker software project. For example, BuyerQuest agreed to support Tradeshift with

9 "planning, configuration, deliverables, integrations, change requests, and product updates" as

10 necessary to complete the Smucker project. BuyerQuest also agreed in the Reseller Order Form

11 to "support any change request through the Change Control Process" and that it would jointly

12 "review and agree on all scope changes prior to adding new requirements to the project." Per the

13 Reseller Order Form and in BuyerQuest's role as a subcontractor, Tradeshift, not BuyerQuest,

14 was responsible for handling all program management duties except for those that exclusively

15 impacted BuyerQuest resources. These contract terms were material and helped ensure that

16 implementing the Smucker project would be managed smoothly through Tradeshift and that

17 BuyerQuest would not unilaterally agree to changes that would negatively affect Tradeshift, the

18 implementation timeline, or the overall Smucker project.

19 <u>The Smucker Project & Notice of Termination</u>

20   16.   The parties began work on the Smucker project in July 2019. The parties made

21 substantial implementation progress and quickly completed several milestones. Project progress

22 continued apace into January 2020, when the parties were engaged in system and user acceptance

23 testing in preparation for "going live" with the solution for Smucker later that spring.

24   17.   In the midst of the parties' work to complete the next milestone(s), Smucker sent a

25 letter dated January 16, 2020 ("the Smucker Notice"), purporting to terminate the Smucker

26 Services Agreement effective January 17, 2020. The purported basis for Smucker's termination

27 was that Tradeshift had allegedly made certain intentional and material misrepresentations about

28 its product capabilities that rendered the agreement voidable. Without identifying any specific

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alleged misrepresentations, Smucker claimed that Tradeshift "knew that these representations were false when made to Smucker" and that "Smucker would never have entered into the [Smucker Services] Agreement" had Tradeshift been accurate.

18.   The Smucker Notice advised that Tradeshift should "immediately cease access to and use of Smucker's systems, or to any Smucker Confidential Information provided in connection with the project."   In addition, Smucker said that it would "advise any Tradeshift personnel planning to travel to a Smucker facility [in the] next week that their onsite presence is not required" and that access to Smucker systems and facilities has been suspended. Finally, Smucker noted that it had "advised [its] team not to have any further communication with Tradeshift personnel."

19.   Although BuyerQuest is not a party to the Smucker Services Agreement, Smucker emphasized in the Notice that it "is also important to note that all the documented misrepresentations were in connection with the capabilities of the Tradeshift SaaS, not those represented as part of the BuyerQuest SaaS." Even though Smucker had no direct contractual relationship with BuyerQuest, the Smucker Notice also stated that Smucker would notify BuyerQuest of its termination decision.

20.   The Smucker Notice took Tradeshift's Smucker team by total surprise. Tradeshift promptly attempted to contact senior project executives from both the Smucker and the BuyerQuest teams. Having had no response, Tradeshift wrote to BuyerQuest on January 23, 2020 to notify it of Smucker's January 16 notice. In that January 23 letter, Tradeshift expressed its "complete surprise" at Smucker's notice and emphasized that Tradeshift had "not yet established the basis for the claims [Smucker had] made." Consequently, Tradeshift cautioned that BuyerQuest should "[c]onsider this notice of termination of the SOW per our agreement" only "to the extent of an effective termination of the SOW by the client." Tradeshift went on to explain that it was investigating the effectiveness of the Smucker Notice and asked for BuyerQuest's cooperation, noting that BuyerQuest had been ignoring outreach from Tradeshift executives. Tradeshift specifically requested a time for discussions between executive representatives. Contrary to the accusations in the Smucker Notice, Tradeshift determined that there had been no

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1   such misrepresentations and Smucker's attempt to terminate the agreement was therefore

2   ineffective.

3   21.   Concerned that BuyerQuest might be working to interfere with the Smucker

4   Services Agreement, Tradeshift also reminded BuyerQuest of its obligation of good faith and fair

5   dealing and warned that certain previous and suspected BuyerQuest communications with

6   Smucker during the project could be viewed as breach of contract and tortious interference. As

7   examples, Tradeshift noted concerns raised "about BuyerQuest failing to work with Tradeshift to

8   mutually agree on scope changes in the project" and "instances of BuyerQuest personnel

9   improperly directly addressing topics with BuyerQuest that should have gone through Tradeshift

10   or should have been a joint message to the customer." Tradeshift said that such instances were

11   not only a breach of the Reseller Order Form, but "may have contributed to dissatisfaction by the

12   customer."

13   22.   BuyerQuest responded to Tradeshift's January 23, 2020 letter *that same day with a*

14   *letter from an outside law firm.* The January 23 letter confirmed that BuyerQuest had, in fact,

15   directly communicated with Smucker about both the termination dispute *and* the Smucker project

16   without involving Tradeshift. Citing Smucker's supposed termination of the Smucker Services

17   Agreement, BuyerQuest argued, however, "there is no bar on direct communications or dealings

18   between BuyerQuest and Smucker."

19   23.   Under the terms of the Reseller Order Form, which had not been terminated,

20   BuyerQuest was contractually obligated to communicate with Tradeshift, including in resolving

21   Smucker project change requests and disputes. The Statement of Work ("SOW") attached at

22   Exhibit F to the Reseller Order Form is replete with provisions that obligate BuyerQuest to

23   communicate with and through Tradeshift in connection with integration and implementation

24   issues on the Smucker project.

25   24.   Tradeshift exchanged a series of further letters with Smucker and BuyerQuest

26   between January 27 and February 13, 2020. Smucker maintained in these communications that

27   the Smucker Services Agreement was terminated. BuyerQuest likewise maintained that Smucker

28   terminated its agreement with Tradeshift and noted that both Smucker and Tradeshift had

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1   instructed BuyerQuest to do no further work on the Smucker project. BuyerQuest told Tradeshift

2   it had no ongoing obligation to communicate with it about the Smucker project because the

3   project had been "terminated by both Smucker and Tradeshift."

4   25.   In its communications, Tradeshift continued to argue that Smucker has not

5   effectively terminated the Smucker Services Agreement and that instead BuyerQuest had

6   breached its agreements in refusing to engage with Tradeshift to communicate with Smucker,

7   both during the project and following Smucker's unfounded misrepresentation claims. Tradeshift

8   warned Smucker and BuyerQuest of its suspicion that the two were working together to falsely

9   disparage Tradeshift in an effort to justify cancelling the Smucker Services Agreement in favor of

10   a direct Smucker-BuyerQuest deal. Neither Smucker nor BuyerQuest has denied that they intend

11   to work directly together following Smucker's attempt to terminate its contract with Tradeshift.

12   26.   On information and belief, BuyerQuest's misconduct has directly contributed to

13   Tradeshift's loss of benefits under the Smucker Services Agreement. On information and belief,

14   BuyerQuest had multiple communications with Smucker about the Smucker project in breach of

15   its obligations under the Reseller Order Form and related agreements. On information and belief,

16   BuyerQuest disparaged Tradeshift to Smucker in such communications, including claiming that

17   Tradeshift could not provide functionality that Tradeshift could, in fact, provide and, on

18   information and belief, claiming that Tradeshift was solely at fault for all problems on the

19   Smucker project. On information and belief, BuyerQuest agreed with Smucker to make changes

20   to the scope and requirements for the Smucker project without involving Tradeshift in the

21   communications, following the "Change Control Process" requirement by the SOW, and without

22   obtaining Tradeshift's agreement.

23   27.   Additionally, on information and belief, BuyerQuest has taken affirmative steps to

24   derail and interfere with Tradeshift's contract with Smucker in order to secure a direct contract

25   with Smucker for itself. BuyerQuest was aware of the Smucker Services Agreement but, on

26   information and belief, BuyerQuest falsely and unfairly disparaged Tradeshift's products and

27   services to Smucker in order to encourage and cause Smucker to improperly terminate the

28   Smucker Services Agreement. On information and belief, BuyerQuest did so in order to secure

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its own direct contract with Smucker for the entire scope of the Smucker project. Smucker has

maintained that the Smucker Services Agreement is terminated and has continued to refuse to

allow Tradeshift to perform its obligations; as a result, Tradeshift is being damaged.

FIRST CAUSE OF ACTION
Breach of Contract

28.   Tradeshift hereby alleges and incorporates by reference paragraphs 1 through 27,

inclusive, of this complaint, as though fully set forth herein.

29.   In June 2019, Tradeshift and BuyerQuest entered into the Tradeshift Partner

Program Agreement, Cross Selling Attachment, and Reseller Order Form (collectively, "the

BuyerQuest Agreements"). Among other things, the BuyerQuest Agreements require

BuyerQuest to provide the services outlined in the Statement of Work attached to the Reseller

Order Form. As part of the services, the BuyerQuest Agreements require BuyerQuest to support

Tradeshift with planning, configurations, deliverables, integrations, change requests, and product

updates as necessary for Smucker's implementation. The BuyerQuest Agreements also require

BuyerQuest to cooperate with Tradeshift to review and agree on all scope changes prior to

changing scope or adding new requirements to the project. BuyerQuest was also contractually

required under the BuyerQuest Agreements to include Tradeshift in communications with

Smucker unless the communications related solely to BuyerQuest product functionality.

30.   Tradeshift has substantially complied with all conditions, covenants and promises

required on its part to be performed under each of the BuyerQuest Agreements except to the

extent they have been excused by BuyerQuest's refusal to perform. Moreover, all conditions

required for BuyerQuest's performance under the Agreement have occurred.

31.   BuyerQuest has materially breached the BuyerQuest Agreements on multiple

occasions, including, on information and belief, by, for example, failing to obtain Tradeshift's

review and consent to scope changes to the Smucker project; interfering with Tradeshift's

program management duties; failing to support Tradeshift with planning, configurations,

deliverables, integrations, change requests, and product updates necessary for the Smucker

project implementation; failing to follow Tradeshift's lead with respect to supplier onboarding

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1   strategy and planning; failing to follow the Change Control Process; and failing to include

2   Tradeshift in communications with Smucker related to the Smucker project.

3   32.   BuyerQuest has further materially breached the Agreements by refusing to

4   perform any of its work or obligations following Smucker's purported termination of the Smucker

5   Services Agreement.

6   33.   As a direct and proximate result of BuyerQuest's breach of the BuyerQuest

7   Agreements, Tradeshift has been damaged in an amount to be determined at trial but no less than

8   the amount it had paid BuyerQuest under the BuyerQuest Agreements plus other consequential

9   and expectation damages in amount to be determined at trial.

10   **SECOND CAUSE OF ACTION**
                Intentional Interference with Contractual Relations

11   34.   Tradeshift hereby alleges and incorporates by reference paragraphs 1 through 33,

12   inclusive, of this complaint, as though fully set forth herein.

13   35.   Tradeshift and Smucker entered into the Smucker Services Agreement effective

14   June 30, 2019.

15   36.   BuyerQuest was aware of the Smucker Services Agreement and its terms,

16   including because it is expressly referenced in the Reseller Order Form.

17   37.   With knowledge of the Smucker Services Agreement, on information and belief,

18   BuyerQuest engaged in conduct that was designed to interfere with the Smucker Services

19   Agreement and that did, in fact, interfere with the Smucker Services Agreement. For example, on

20   information and belief, BuyerQuest disparaged Tradeshift and its products to Smucker and

21   misrepresented the capabilities of Tradeshift and its products. On information and belief,

22   BuyerQuest also engaged in communications with Smucker about the Smucker project to the

23   exclusion of Tradeshift which subsequently caused program delays and disruptions that reflected

24   poorly (and unfairly) on Tradeshift and its products. On information and belief, BuyerQuest

25   discussed, proposed, and/or agreed to certain project modifications without including Tradeshift

26   and which caused Smucker to lose confidence in Tradeshift. This conduct, taken altogether, on

27   information and belief was intended to interfere with the Smucker Services Agreement and cause

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1   Smucker to terminate the Smucker Services Agreement.

2   38.   BuyerQuest's tortious interference with the Smucker Services Agreement caused

3   harm to Tradeshift because Smucker has purported to terminate the Smucker Services Agreement.

4   Consequently, Tradeshift has lost fees to which it was entitled under the terms of the Smucker

5   Services Agreement.

6   39.   BuyerQuest's tortious conduct was a substantial factor in causing Smucker to

7   purport to terminate the Smucker Services Agreement and the subsequent harm to Tradeshift. As

8   a direct and proximate result of BuyerQuest's tortious interference, Tradeshift has been damaged

9   in an amount to be determined at trial but no less than the amount it had yet to collect under the

10   Smucker Services Agreement.

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THIRD CAUSE OF ACTION
Breach of Implied Covenant of Good Faith and Fair Dealing

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13   40.   Tradeshift hereby alleges and incorporates by reference paragraphs 1 through 39,

14   inclusive, of this complaint, as though fully set forth herein.

15   41.   Tradeshift and BuyerQuest entered into the BuyerQuest Agreements in June 2019.

16   BuyerQuest had an implied obligation to deal with Tradeshift honestly, fairly, and in good faith in

17   connection with each such agreement.

18   42.   Tradeshift has substantially complied with all conditions, covenants and promises

19   required on its part to be performed under the BuyerQuest Agreements except to the extent they

20   have been excused by BuyerQuest's refusal to perform. Moreover, all conditions required for

21   BuyerQuest's performance under the BuyerQuest Agreements had occurred.

22   43.   BuyerQuest has taken actions that unfairly interfered with Tradeshift's right to

23   receive the benefits of the BuyerQuest Agreements. On information and belief, BuyerQuest took

24   steps to encourage Smucker to wrongfully terminate the Smucker Services Agreement so that

25   BuyerQuest could do a direct deal with Smucker without Tradeshift for the Smucker project. In

26   turn, BuyerQuest has cited Smucker's ineffective termination of the Smucker Services Agreement

27   for BuyerQuest's own refusal to continue to perform under and comply with the terms of the

28   BuyerQuest Agreements. BuyerQuest also refused to communicate with, cooperate with, or

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1   support Tradeshift in seeking to finish implementation of the Smucker Project. Accordingly, on

2   information and belief, BuyerQuest manufactured an excuse not to perform its obligations under

3   the BuyerQuest Agreements and thus deprived Tradeshift of its benefit under those agreements.

4   44.   As a direct and proximate result of Tradeshift's breach of the implied covenant of

5   good faith and fair dealing, Tradeshift has been damaged in an amount to be determined at trial

6   but no less than the amount it had paid BuyerQuest under the BuyerQuest Agreements plus other

7   consequential and expectation damages in amount to be determined at trial.

8   **PRAYER FOR RELIEF**

9   WHEREFORE, Tradeshift prays for judgment as follows:

10   1.   For actual damages in an amount to be proven at trial, but not less than

11                $4,323,070;

12   2.   Punitive and/or statutory damages;

13   3.   Pre-judgment and post-judgment interest at the maximum rate allowed by law;

14   4.   Reasonable attorneys' fees, court costs, and expert witness fees incurred by virtue

15   of this action; and

16   5.   Such other and further relief as the Court may deem proper.

17

18   Dated: February 20, 2020   AMY K. VAN ZANT
                                          JASON K. YU
19   TAMMY SU
                                          Orrick, Herrington & Sutcliffe LLP
20

21
                                          By: /s/ Amy K. Van Zant
22   AMY K. VAN ZANT
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23   TRADESHIFT, INC.

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JURY TRIAL DEMAND

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff demands a trial by jury on all issues so triable.

Dated: February 20, 2020

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By: /s/ Amy K. Van Zant
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